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10
11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 **MATTHEW M. KOZLOWSKI,**

15 Plaintiff,

16 v.

17 **OLIVER, et al.,**

18 Defendants.
19

C 06-03006 JW (PR)

20 **STIPULATION AND**
[Proposed] ORDER OF
DISMISSAL

21 Following a mediation with the Honorable Magistrate Judge Nandor Vadas, the parties
22 agree as follows:

- 23 A. Plaintiff Matthew M. Kozlowski (Plaintiff) filed his Complaint in this action on May 3,
24 2006, and the Court ordered service on May 3, 2007 (Ct. Docket Nos. 1, 9.)
25 B. In his Complaint, Plaintiff alleges that on December 4, 2005, while he was being
26 moved to his cell at Salinas Valley State Prison Defendant Ralston subjected him to
27 excessive force in violation of 42 U.S.C. § 1983. Additionally, Plaintiff claimed that
28 Defendant was deliberately indifferent to Plaintiff's serious medical needs.

- 1 C. In its Order of Service, the Court screened Plaintiff's Complaint and found that
2 liberally construed, Plaintiff's Complaint stated cognizable claims of: (1) excessive
3 force and (2) deliberate indifference to a serious medical condition. (Ct. Docket No.
4 9.) The Court ordered service of Plaintiff's Complaint on Defendant. (*Id.*)
- 5 D. The Court referred this matter to Magistrate Judge Vadas for mediation. (Ct. Docket
6 No. 29.)
- 7 E. The parties mediated this matter before Magistrate Judge Vadas on January 31, 2008 at
8 Mule Creek State Prison, Ione, California and reached a full and final settlement of this
9 action. The parties wish to fully resolve all matters which were or could have been
10 asserted in this action. Therefore, they now enter into this stipulation to fully settle and
11 discharge all claims that are, or might have been, the subject matter of the action, upon
12 the terms and conditions set forth below.

13 IN ACCORDANCE WITH MATTERS DISCUSSED BY MAGISTRATE JUDGE
14 VADAS AND THE PARTIES AT THE JANUARY 31, 2008 MEDIATION, THE PARTIES
15 STIPULATE AS FOLLOWS:

- 16 1. Plaintiff agrees to the voluntary dismissal with prejudice of the above-captioned action
17 under Federal Rule of Civil Procedure 41(a).
- 18 2. In consideration for a release of all claims and a stipulation of dismissal in this action,
19 the California Department of Corrections and Rehabilitation (CDCR), on behalf of
20 Defendant, agrees to the following: (1) to pay Plaintiff Five Thousand Dollars and no
21 cents (\$5,000); and (2) to withdraw the CDC 115 Rules Violation Report (RVR) Log
22 No. A05-12-0006 from Plaintiff's central file (C-file).
- 23 3. At the time that Plaintiff signs this stipulation, he shall also sign and return to defense
24 counsel a Payee Data Record form. Upon receipt of the executed Stipulation and Order
25 of Dismissal and Payee Data Record Form, CDCR will have up to ninety days to: (1)
26 issue the settlement payment check; and (2) to withdraw the CDC 115 Rules Violation
27 Report (RVR) Log No. A05-12-006 from Plaintiff's central file (C-file).

28 ///

- 1 4. Plaintiff expressly waives and assumes the risk of any and all claims for damages that
2 exist as of this date, but that he does not know or suspect to exist, whether through
3 ignorance, oversight, error, negligence, or otherwise, and that, if known, would
4 materially affect his decision to enter into this settlement agreement. Plaintiff has read
5 the contents of California Civil Code Section 1542, and he expressly waives the
6 benefits of this section. Section 1542 reads as follows: "A general release does not
7 extend to claims which the creditor does not know or suspect to exist in his or her
8 favor at the time of executing the release, which if known by him or her must have
9 materially affected his or her settlement with the debtor."
- 10 5. In consideration of the obligations set forth in paragraph 2, Plaintiff completely
11 releases and forever discharges Defendant, all served and unserved defendants, CDCR,
12 CDCR's agents and employees, Salinas Valley State Prison, and any unnamed
13 defendants, from any and all claims that are the subject of the action as alleged in
14 Plaintiff's Complaint that are based on, related to, or derived from the alleged acts or
15 omissions of Defendant, CDCR, or Salinas Valley State Prison as alleged in Plaintiff's
16 Complaint filed in this action.
- 17 6. Under California Penal Code Section 2085.5, all outstanding restitution orders and
18 fines must first be paid directly from this settlement. The restitution fines and fees, if
19 any, shall be deducted from the settlement proceeds, and the remainder of the
20 settlement amount will be issued by check payable to Plaintiff. The parties understand
21 that at the time of the settlement, Plaintiff owed ten thousand dollars (\$10,000) in
22 restitution.
- 23 7. This agreement does not constitute an admission of liability or any wrongdoing on
24 behalf of any party.
- 25 8. Each party shall bear his own attorneys' fees and costs.
- 26 9. This stipulation shall constitute the entire agreement between the parties arising from
27 the allegations alleged in this action, and the parties expressly understand and agree
28 they have freely and voluntarily entered into this stipulation. The stipulation may not


1 be altered, amended, modified, or otherwise changed in any respect except by a writing
2 duly executed by the parties to this agreement.

3 IT IS SO STIPULATED.


4
5 Dated: February ____, 2008

MATTHEW M. KOZLOWSKI, PLAINTIFF

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7 Dated: February 4, 2008


KAYE BASSETT, STAFF COUNSEL
Office of Legal Affairs
California Department of Corrections and
Rehabilitation

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9
10 Dated: February 6, 2008


TRACE O. MAJORINO
Deputy Attorney General
Attorneys for Defendant Ralston

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15 ORDER

16 IT IS HEREBY ORDERED


17 The parties reached a settlement at the January 31, 2008 mediation with Magistrate Judge
18 Vadas. The terms of that settlement include an agreement to:

- 19 (1) pay Plaintiff Five Thousand Dollars and no cents (\$5,000); and
20 (2) to withdraw the CDC 115 Rules Violation Report (RVR) Log No. A05-12-0006 from
21 Plaintiff's central file (C-file).

22 Based on the resolution reached, this case shall be dismissed with prejudice.

23
24 IT IS SO ORDERED.

25 Dated: February 19, 2008


THE HONORABLE JAMES WARE
United States District Court Judge

1 be altered, amended, modified, or otherwise changed in any respect except by a writing
2 duly executed by the parties to this agreement.

3 IT IS SO STIPULATED.

4
5 Dated: February 06, 2008

Kozlowski Matthew
MATTHEW M. KOZLOWSKI, PLAINTIFF

6
7 Dated: February ____, 2008

KAYE BASSETT, STAFF COUNSEL
Office of Legal Affairs
California Department of Corrections and
Rehabilitation

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11 Dated: February ____, 2008

TRACE O. MAIORINO
Deputy Attorney General
Attorneys for Defendant Ralston

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16 ORDER

17 IT IS HEREBY ORDERED

18 The parties reached a settlement at the January 31, 2008 mediation with Magistrate Judge
19 Vadas. The terms of that settlement include an agreement to:

- 20 (1) pay Plaintiff Five Thousand Dollars and no cents (\$5,000); and
21 (2) to withdraw the CDC 115 Rules Violation Report (RVR) Log No. A05-12-0006 from
22 Plaintiff's central file (C-file).

23 Based on the resolution reached, this case shall be dismissed with prejudice.

24 IT IS SO ORDERED.

25 Dated: _____

THE HONORABLE JAMES WARE
United States District Court Judge

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Stip. & [Prop.] Order Dismissal

M.W. Kozlowski v. Oliver, et al.
C 06-03006 JW (PR)

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **M.W. Kozlowski v. Oliver, et al.**

No.: **C 06-03006 JW (PR)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **February 7, 2008**, I served the attached

STIPULATION AND [Proposed] ORDER OF DISMISSAL

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Matthew Mark Kozlowski, P-82055
Mule Creek State Prison
P.O. Box 409099
Ione, CA 95640
Pro Per

The Honorable Nandor Joseph Vadas
United States District Court
P.O. Box 1306
Eureka, CA 95502

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **February 7, 2008**, at San Francisco, California.

T. Oakes
Declarant


Signature